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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,472	07/16/2003	David S. Rathbun	8932-767	7370
69095 7590 07/17/2007 STROOCK & STROOCK & LAVAN, LLP 180 MAIDEN LANE NEW YORK, NY 10038			EXAMINER PRIDDY, MICHAEL B	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 07/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/619,472

Applicant(s)

RATHBUN ET AL.

Examiner

Michael B. Priddy

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 6, 7, 11, 15, 18, 25, 26, 28 & 29 is/are rejected.
- 7) ☒ Claim(s) 8-10, 12, 13, 16, 17, 27 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, 7, 11, 18, 25, 26, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Serbousek et al. (U.S. 6,066,142). Serbousek et al. teaches a surgical drill guide assembly comprising: an outer stem 90 having a bore and a longitudinal axis; at least one drill guiding barrel 21 having a passageway 144, the passageway 144 having a predetermined trajectory, the predetermined trajectory being at a substantially fixed angle with respect to the outer stem 90, the at least one drill guiding barrel 21 being attached to the outer stem and configured to receive and guide a surgical drill bit 140, wherein the at least one drill guiding barrel 21 is movably attached to the outer stem 90 (via telescopic mechanism 18) such that the fixed angle of the drill guiding barrel 21 remains constant throughout movement of the drill guiding barrel 21 relative to the outer stem 90; a rod 130 at least partially disposed in the bore and releasably attached to both the outer stem 90 and a bone plate, said rod 130 being threaded 133 at one end; further comprising a handle member 128 offset from the stem by an offset handle arm; the barrel has a depth stop (upper surface) to prevent a drill bit from exceeding a pre-determined depth.

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Concerning the limitations of claims 25 and 26, it is noted that without being attached to the vertebra as depicted in Fig. 1, the system of Serbousek et al. could be rotated in free space about an axis parallel to a longitudinal axis of the outer stem. During such a rotation, the drill guiding barrel 21 would be pivoting about the same axis.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Serbousek et al. as applied to claim 6 above, and further in view of the following. Serbousek et al. disclose the claimed invention except for the drill guide barrel having a plurality of drill insertion locations and being movable relative to outer stem 90. Serbousek et al. actually teach two drill guide barrels 20 and 21. Drill guide barrel 20 has a plurality of drill insertion locations 146, 148 but is not movable relative to outer stem 90. It would have been obvious to one having ordinary skill in the art at the time the invention was made to reverse the location of guide barrels 20 and 21, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. In re Einstein, 8 USPQ 167.

Allowable Subject Matter

Claim 20 allowed.

Claims 8-10, 12, 13, 16, 17, 27 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is 571-272-2243. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael B. Priddy
Michael B. Priddy
July 5, 2007

[Signature]
EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER